

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOIS L. RICHARDSON and U.S. POSTAL SERVICE,
POST OFFICE, Abilene, TX

*Docket No. 03-133; Submitted on the Record;
Issued June 3, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for merit review.

On October 16, 1996 appellant, then a 32-year-old data conversion operator, filed an occupational disease claim for compensation for an employment injury arising on or about October 1, 1996. The Office accepted appellant's claim for bilateral medial and lateral epicondylitis. Additionally, appellant received appropriate wage-loss compensation.

On October 5, 2001 the Office granted appellant a schedule award for a five percent permanent impairment of both the left and right upper extremities. The award covered a period of 31.20 weeks.

Appellant requested reconsideration on June 3, 2002. Her request was accompanied by an October 6, 1997 psychological evaluation by Dr. W. Truett Smith. Additionally, appellant submitted a November 25, 1996 report from Dr. John H. Judd, Jr., a Board-certified orthopedic surgeon, and a January 22, 1997 report from Dr. Hugh A. Frederick, also a Board-certified orthopedic surgeon. Lastly, appellant submitted a May 10, 2001 notice of removal from the employing establishment. By decision dated July 24, 2002, the Office denied appellant's request for reconsideration.

The Board finds that the Office properly exercised its discretion in refusing to reopen appellant's case for merit review under 20 C.F.R. § 10.608.¹

¹ The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. *Marilyn F. Wilson*, 51 ECAB 234, 235 (1999). The instant appeal was dated October 20, 2002 and postmarked October 21, 2002. As such, the Board does not have jurisdiction over the Office's October 5, 2001 schedule award.

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.² Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.³

Appellant's June 3, 2002 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2). With respect to the third requirement, constituting relevant and pertinent new evidence not previously considered by the Office, the evidence appellant submitted on reconsideration was previously of record. Dr. Smith's October 6, 1997 psychological evaluation as well as the November 25, 1996 and January 22, 1997 orthopedic evaluations from Drs. Judd and Frederick were previously submitted and considered by the Office. Additionally, the May 10, 2001 notice of removal was already part of the record. As this evidence does not constitute "relevant and pertinent new evidence," it is insufficient to warrant modification of the prior decision.⁴ Accordingly, appellant is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).

As appellant is not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office did not abuse its discretion in denying appellant's June 3, 2002 request for reconsideration.

² 20 C.F.R. § 10.606(b)(2) (1999).

³ 20 C.F.R. § 10.608(b) (1999).

⁴ Evidence that is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening the claim. *Saundra B. Williams*, 46 ECAB 546 (1995); *Sandra F. Powell*, 45 ECAB 877 (1994).

The July 24, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
June 3, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member